

**IN RE NATIONAL CEMENT COMPANY OF CALIFORNIA,
INC. AND SYSTECH ENVIRONMENTAL CORPORATION**

RCRA Appeal Nos. 94-5, 94-6

ORDER DENYING REVIEW

Decided July 22, 1994

Syllabus

National Cement Company of California, Inc. and Systech Environmental Corp. have filed separate petitions asking the Environmental Appeals Board to review the decision of Region IX denying National's application for a RCRA permit. The permit is for National's cement manufacturing plant in Lebec, California. The facility, which uses hazardous waste as a supplemental fuel, is regulated under the Boilers and Industrial Furnace Rule ("BIF Rule"). 40 C.F.R. § 270.66; 56 Fed. Reg. 7134 (February 21, 1991). The land on which National's facility is located is owned and leased to National by Tejon Ranchcorp. Tejon has no involvement in the operation of the facility. National's permit application originally did not include Tejon's signature. Because Tejon owns the land on which the plant is located, however, the Region regarded Tejon as an owner of the facility and concluded that National's application would not be complete without Tejon's signature and a certification statement containing the language set forth in section 270.11(d). Tejon ultimately signed National's permit application, but it refused to sign the certification statement required under section 270.11(d). After repeated extensions of time to allow National to resolve this problem with Tejon, the Region denied National's permit application as incomplete because it lacked the requisite certification statement from Tejon.

National and its supplier of hazardous waste, Systech Environmental Corp., have filed separate petitions challenging this decision. Their arguments follow: (1) The certification requirement does not apply to "absentee landowners" like Tejon that do not take part in the operation of the facility; (2) Even if a literal application of section 270.11(d) requires that absentee landowners sign the certification statement, the requirement is inappropriate as applied to such owners and the Agency should exempt such owners using its inherent authority to relax inappropriate procedural requirements when justice so requires; (3) National's permit application is complete without Tejon's signature, so even if Tejon is required to sign a certification statement, the proper remedy is not denial of National's permit application but enforcement against Tejon for not filing its own application; (4) National, and not Tejon, should be considered the landowner, since National holds a 99-year lease from Tejon and possesses other incidents of ownership; (5) the policies that motivated Congress to pass RCRA would be undermined by closing down National's facility over a minor procedural technicality like the certification requirement; (6) the Agency is estopped from denying National's permit application because in the past it has accepted applications that do not have the signatures of absentee landowners; and (7) denial of National's application violates the takings clause, the contract clause, and the due process clause of the U.S. Constitution, because it effectively prevents lessee's from obtaining RCRA permits.